

Rules & Regulations Pertaining to Fees, Burial Transportation & Disinterment

901 KAR 5:031

Section 1. (2) “**Fetal death**” means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of the pregnancy. Fetal death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as the beating of the heart, the pulsation of the umbilical cord, or definite movement of the voluntary muscles.”

Section 1. (3) **Fetal death** registration. Each spontaneous fetal death in which the fetus weighs 350 grams or more or has a gestation age of twenty weeks (20) weeks measured from the beginning of the mother’s last menstrual period shall be completed and filed with the local registrar within ten (10) days following the date of delivery. The certificate of fetal death shall not be used to report induced terminations of pregnancy i.e. abortions as defined by KRS 311.720(1).

901 KAR 5:040

Section 1. **Verifications of certain facts appearing on birth and death certificates.** The Director of Vital Statistics of the Cabinet for Human Resources may issue a card or statement verifying certain items of facts appearing on birth and death certificates to governmental agencies without charge where certified copies are not required.

901 KAR 5:050E

Section 1. **Fees for searches and certified copies of certificates.** The following fees shall be charged for searches for and copies of records registered with the State Registrar of Vital Statistics, Cabinet for Human Resources:

Record	Record Search & Certified Copy	Record Search But No Copy
Death	\$6.00	\$6.00
Marriage	\$6.00	\$6.00
Divorce	\$6.00	\$6.00
Birth	\$10.00	\$10.00

901 KAR 5:080

Section 1. **Delayed Registration of Deaths.** The registration of a death after the time prescribed by **KRS 213.076** shall be registered on the standard certificate of death form in the manner prescribed below:

- (1) If the attending physician, medical examiner or coroner at the time of death and the attending funeral director or person who acted as such are available to complete and sign the certificate of death, it may be completed without additional evidence and filed with the state registrar of vital statistics. However, certificates of death filed with the state registrar of vital statistics one (1) year or more after the date of death, shall be signed by the attending physician, medical examiner or coroner and the funeral director or person acting as such and shall be accompanied by one (1) item of documentary evidence as specified in subsection (4) of this section.
- (2) In the absence of the attending physician, medical examiner or coroner and the funeral director or person who acted as such, the certificate may be filed by the next of kin of the deceased and shall be accompanied by:
 - a. An affidavit of the person filing the certificate swearing to the accuracy of the information of the certificate; and
 - b. Two (2) documents which identify the deceased and the date and place of death.
- (3) In the case of presumptive death, a certified copy of a court order finding that such death has occurred and the date and place of such death shall be received by the state registrar of Vital Statistics before a death certificate can be filed.
- (4) In all cases, the state registrar of Vital Statistics may require additional documentary evidence to prove the facts of death. Items of documentary evidence may be the obituary from a newspaper, or records from a funeral home showing services rendered decedent, or a medical record.

901 KAR 5:090

Section 1. **Burial transit permits, (Provisional report of death)**

- (1) The funeral director, or person acting as such, shall procure a burial-transit permit from the local registrar of vital statistics of the county where death occurred, prior to removal or disposition of the body. The permit shall grant permission for the transportation and burial or other disposition of the body. In the event the body is to be shipped by a common carrier the local registrar shall issue the permit in duplicate and a copy shall accompany the body.

- (2) A burial-transit permit issued by the appropriate authority of another state accompanying a body shipped into Kentucky shall be deemed permission for burial in this state. Such permit shall be signed by the sexton or other authorized official of the cemetery after burial and shall be filed with the local registrar of the county in which burial occurs.
- (3) In the event a body is to be cremated, the funeral director, or person acting as such, shall so inform the local registrar of the county where the death occurred, who shall obtain the approval of the coroner on the burial-transit permit as a condition precedent to issuing it as required by KRS 213.081. The funeral director, or person acting as such, shall deliver a copy of the permit bearing the coroner's approval to the crematorium. The person in charge of the crematorium shall sign the permit in the space provided for the sexton's signature after the body is cremated and shall file the permit with the local registrar for the county in which the cremation occurs. No permit shall be required for the transportation or disposal of the cremated remains.

Section 2. **Interment.**

- (1) Where the disposition of the body is by burial and the outer container for the body is made of concrete, metal, fiber glass, or other impervious material and it is hermetically sealed, all parts of such container shall be buried to a depth of at least two (2) feet below the level of the natural surface of the ground. All other burials shall be at least three (3) feet below the level of the natural surface of the ground measured from all parts of the outer container.
- (2) Where impenetrable rock is encountered the local health department may, upon proper application, grant a variance to the depth of burial requirements of this regulation.
- (3) The depth of burial requirements of this regulation do not apply where interment is in a mausoleum.

Section 3. **Disinterment.**

- (1) When one (1) or more bodies are to be disinterred for reburial in the same cemetery, a disinterment-reinterment permit shall be procured upon proper application from the local registrar.
- (2) When one (1) or more bodies are to be disinterred for reburial in a different cemetery or for other disposal, an application for a disinterment-reinterment permit shall be made to the state registrar of vital statistics. The application shall contain the following information:
 - a. Name of deceased, if known;
 - b. Date of death;

- c. Original grave site;
- d. Proposed grave site;
- e. Approximate date of removal;
- f. Name of the person or firm who will remove the body or bodies;
- g. A statement by the applicant that he has made, or will make, a reasonable effort to contact and obtain written permission from the next-of-kin for the removal of the remains; and
- h. A statement by the applicant that he is familiar with and will abide by all applicable laws, regulations, and policies relating to the establishment and abandonment of the cemeteries and the custody, handling, and disposal of human remains.

Section 4. **Reburial.**

- (1) All disinterred human remains intended for reburial, and all other contents of the grave, shall be enclosed in a container constructed of strong material and of sufficient size to hold the remains without altering their shape or size. In the event the human remains are not thoroughly decomposed the container shall be sealed to prevent the escape of liquids or gas.
- (2) The depth of burial requirements of section 2 of this regulation shall apply to all reburials except that human remains which are thoroughly decomposed need to be reburied only to such depth so that no part of the container is less than two (2) feet below the natural surface of the ground.

Order for determining the next of kin

The surviving spouse
 The surviving adult children
 The surviving parents
 The surviving adult grandchildren
 The surviving adult siblings
 A next closest adult relative

Pre-Need....KRS Chapter 367

The following section contains a summary of the funeral home pre-need sales law. It is for informational purposes only and does not include all of the details contained in the law. For further information, please write or call the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Ste. 200 Frankfort, Kentucky, 40601-8204, (502-696-5389).

The sale of Pre-Need Funeral Service or Merchandise

This law pertains to persons who sell pre-need burial contracts. “Pre-need Burial Contract” means a contract which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of a person whose body is to be disposed of. This definition does not include the furnishing of cemetery lot or a mausoleum.

Pre-need burial contracts include the pre-need sale of funeral services, caskets, vaults, and any other funeral merchandise. It also includes the pre-need sale of opening and closing costs of the grave.

All persons selling pre-need burial contracts must be licensed by the Attorney General’s office at least 30 days prior to offering for sale a pre-need burial contract.

The license application fee is \$50.00.

Each address must file a separate application, and the license issued pursuant to that application is valid only at the address stated in the application.

Trust Fund Requirement

Any person selling a pre-need burial contract is required to place 100 percent of the purchase money received into a trust fund with a financial institution within 30 days of receipt.

Financial institution includes a bank, trust company, federally chartered credit union, or savings and loan association licensed to do business in Kentucky.

These deposits of money may be put into one centralized trust fund, but the accounting records shall establish a separate account for each contract showing amounts deposited and the income and loss.

The financial institution is the trustee of these funds. The person receiving the payments who is licensed by the attorney general’s office is the agent.

The money deposited into the trust fund account remains in the trust fund until the financial institution receives a certified statement from the agent setting forth that all the terms and conditions of the agreement have been fully performed, and the agent proves the death of the person for whose service the funds were paid by furnishing the financial institution with a verified or certified copy or a record verifying the death (issued by the Vital Statistics Branch) or a provisional certificate of death or until a refund is requested by the purchaser in writing to the trustee and/or agent.

Any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract, or plan shall be paid to the estate of the beneficiary of the agreement, contract, or plan.

Changing Trustee

The agent has the authority to transfer the funds to another trustee upon notification of the Attorney General's office. In any transfer, the former trustee will transfer the funds directly to the newly designated trustee.

Purchaser's Right to Refund/Irrevocable Trusts

Unless the purchaser qualified for an irrevocable trust, purchasers of a pre-need burial contract have the right to receive a refund of all monies they have paid, plus interest earned, upon sending a written request for refund to the trustee and/or agent.

Within 15 days of receiving a request for a refund, the financial institution shall release the funds to the purchaser and notify the agent of the refund.

Effective July 13, 1992 licensees may establish an irrevocable trust for pre-need funeral contracts in limited circumstances. If the person receiving the benefit of the pre-need contract is, becomes, applies, or intends to apply to be an aged, blind, or disabled recipient of the federal SSI benefits or other federal or state entitlement benefits, that person may establish an irrevocable trust provided the person applies for entitlement programs within 30 days of the agreement. The licensee is required to maintain proof of eligibility on forms approved by the Attorney General. If the person becomes ineligible for entitlement benefits or fails to apply for benefits within 30 days, the trust becomes revocable.

The consumer may change the selection of funeral services or goods and may change the agent (licensee), trustee (financial institution), or both upon written application to the agent and trustee. Any pre-need contracts in existence before July 13, 1992, may be made irrevocable upon application of the consumer to the agent and provided the consumer otherwise meets the requirements set forth for irrevocability.

Service Charge

Persons selling a pre-need funeral service contract must collect from each purchaser a service charge of \$5.00. This \$5.00 fee must be submitted to the Attorney General's office with the required report at least once each month and shall be used by the Attorney General's office in administering this law.

Annual Report & Records

Every licensee is required to file an annual report on a form provided by the Attorney General's office. The annual report is due by March 31 following the calendar year covered by the report. A \$10.00 fee from their licensee must accompany the annual report.

Licensees are required by law to maintain adequate records, including the equivalent of a cash receipts journal, a cash disbursement journal. A reconciliation done at least every twelve months and documentation files containing the pre-need burial contracts.

Licensees must also keep a certified copy of a verification of death, issued by the state registrar of the Vital Statistics Branch or its successor agency as authorized by KRS Chapter 213, or a provisional certificate of death as described in KRS 213.076, upon the death of each person for whose service funds were paid to the licensee by the trustee under a pre-need burial contract.

The Attorney General's office may examine the records of the licensee to determine compliance with the law. The licensee shall pay the necessary expense of the examination but, in no event, shall the expense exceed the lesser of: \$100.00 per day for each auditor or \$5.00 for each contract examined.

The licensee may pay for this examination cost using interest money which has accrued on the existing pre-need funeral trust accounts. Any withdrawal of interest

for this purpose must be taken as a pro rata share. The Attorney General's office must be notified if interest money is the source of payment and must receive written certification that the withdrawal was a pro rata share. If the Attorney General's office finds a discrepancy in the examination, it may hire a special independent auditor to do a complete audit at the agent's expense.

The Attorney General's Enforcement Powers

Civil Action

Whenever the Attorney General has reason to believe that any person has failed to comply with any of the provisions of this law and that proceedings would be in the public interest, he may immediately move in the name of the Commonwealth in a Circuit Court for a restraining order or a temporary or permanent injunction. The Attorney General may also seek restitution for persons, civil penalties, litigation costs, and additional orders including appointment of a receiver and/or revocation of a license authorizing any person to engage in business in the Commonwealth.

The Attorney General may recover the cost of the special independent auditor in any successful lawsuit brought under this law.

Individual Liability

Officers, owners, directors and shareholders of companies subject to the provisions of this act, who know of failure to comply with any of the trust provisions of this act and who fail to take prompt and reasonable actions to correct, including notification of the Attorney General's office, shall be personally liable, jointly and severally, for the deficiency existing in the trust funds and for any other civil remedy allowed by law.

In addition to the liabilities declared, any person who brings suit and recovers from an owner, officer, director, or shareholder or a company shall also recover reasonable attorney's fees in an amount to be fixed and adjudged by the court before whom the case is tried.

Criminal Action

Any person or corporation, which is subject to the provisions of this act and willfully violates the trust provisions, shall be guilty of a Class C felony. Each

violation of the trust provisions of this act shall be deemed a separate offense. Either the Attorney General or the appropriate Commonwealth's Attorney may prosecute violators.